Toh Tau Book v Chen Fah Fui

HIGH COURT (MELAKA) — CIVIL SUIT NO 22–137 OF 2002
LOW HOP BING J
18 NOVEMBER 2003

Civil Procedure — Particulars — Further and better particulars — Whether plaintif could obtain order for further and better particulars in the defendant's statement of defence — Rules of the High Court 1980 O 18 r 12(3)

This is an application by the plaintiff for an order that pursuant to O 18 r 12 of the Rules of the High Court 1980 ('the RHC'), the defendant serves on the plaintiff further and better particulars in the defendant's statement of defence. This included, inter alia, the defendant's academic qualification pertaining to his appointment as a laboratory assistant and the name of the plaintiff's friend in para 4 of the defendant's statement of defence for plaintiff's preparation of their case.

Held, allowing the plaintiff's application:

The plaintiff's application is governed by O 18 r 12(3) of the RHC. A litigant is entitled to have from his opponent, particulars of facts relevant to the issues at stake in order to prevent surprise, but he is not entitled to have his opponent's evidence: *Skrine & Co v MBf Capital Bhd & Anor* [1998] 3 MLJ 649. Since para 2 of the defence stated that the defendant is a laboratory assistant, his academic qualification was relevant to the defendant's specific job description and it was a matter arising from the defendant's pleading in the statement of defence. Paragraph 4 of the defence referred to the plaintiff's friend who was unidentified. That being the case, the plaintiff was entitled to know the identity of his friend referred to herein. Similarly, the plaintiff was entitled to know the specific particulars in connection with the general confidential information averred in para 6 of the defence(see paras 10, 13, 16–18).

[**Bahasa Malaysia summary**

Ini merupakan permohonan oleh plaintif untuk satu perintah bahawa menurut A 18 k 12 Keadah-Kaedah Mahkamah Tinggi 1980 ('KMT'), defendan menyampaikan kepada plaintif butir lanjut dan jelas di dalam pernyataan pembelaan defendan. Ini termasuk, antara lain, kelayakan akademik defendan mengenai perlantikan beliau sebagai pembantu makmal dan nama kawan plaintif di dalam perenggan 4 pernyataan pembelaan defendan untuk menolong plaintif di dalam penyediaan kes plaintif.

Diputuskan, membenarkan permohonan plaintif:

Permohonan plaintif ditakluk oleh A 18 k 12(3) KMT. Seorang litigan berhak mendapat butir-butir fakta daripada pihak yang lain yang relevan kepada isu-isu yang dipertikaikan untuk mengelak daripada kejutan, tetapi beliau tidak berhak kepada keterangan pihak yang lain: *Skrine & Co v MBf Capital Bhd & Anor* [1998] 3 MLJ 649. Memandangkan bahawa

perenggan 2 pembelaan menyatakan bahawa defendan merupakan pembantu makmal, kelayakan akademik beliau adalah relevan kepada penggambaran pekerjaan khusus defendan dan ia adalah perkara yang berbangkit daripada pliding defendan di dalam pernyataan pembelaan beliau. Perenggan 4 pembelaan merujuk kepada kawan plaintif yang tidak dikenalpasti. Oleh itu, plaintif berhak mengetahui identiti kawan beliau. Plaintif juga berhak mengetahui butir-butir khusus yang berkait dengan maklumat sulit yang dikatakan di dalam perenggan 6 pembelaan (lihat perenggan-perenggan 10, 13, 16–18).]

Notes

For cases on further and better particulars, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 4138–4146.

Cases referred to

Dato' Seri Dr Ling Liong Sik v Krishna Kumar s/o Sivasubramaniam [2002] 2 MLJ 278 (refd)

Dato' V Kanalingam v Tommy Thomas & Anor [1997] 5 MLJ 229 (refd)

Tan Hoe Kock & Anor v Ali Akarbara bin Mangudin & Ors [1997] 4 MLJ 311 (refd)

Skrine & Co v MBf Capital Bhd & Anor [1998] 3 MLJ 649 (folld)

Legislation referred to

Rules of the High Court 1980 O 18 r 12(3)

Toh Seng Soon (Jacob Goldie & Toh) for the plaintiff.
Ravinathan Muthiah (Ravi Muthiah & Co) for the defendant.

Low Hop Bing J:

APPLICATION

[1] This is an application by the plaintiff in encl (14) for an order that:

1 pursuant to O 18 r 12 of the Rules of the High Court 1980 ('the RHC'), the defendant do serve on the plaintiff, within 14 days of this order, the following further and better particulars in the defendant's statement of defence:

(1) in para 2, details of the defendant's academic qualification pertaining to his appointment as a laboratory assistant;

(2) in para 4:

(a) the name of the plaintiff's friend,

(b) the specific date, time and place of the various incidents in the workplace,

(c) the date, time and place in respect of the specific confidential information concerning the plaintiff, given by the defendant to the head office of the plaintiff's employer;

A (d) the name of the director of the plaintiff's employer;

(3) in para 5, details of the manner in which the said confidential information was given, whether orally or in the form of documents and if documentary, details of the documents;

B 2 plaintiff be given leave to record interlocutory judgment should the defendant fail to comply with the order to serve the aforesaid further and better particulars;

3 costs be paid by the defendant to the plaintiff; and

4 other relief.

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Factual background

[2] This is a defamation action by way of a writ and a statement of claim brought by the plaintiff against the defendant. In response thereto, the defendant has filed a statement of defence.

D **[3]** On 11 December 2002 and 25 January 2003, the plaintiff's solicitors wrote to the defendant's solicitors requesting for further and better particulars which now become the subject matter of the instant application.

[4] On 5 February 2003, the defendant's solicitors replied, stating that the defendant's academic qualification was irrelevant and that witnesses E would be produced in court at the trial. Paragraph 2 of the defence avers that the defendant is a laboratory assistant.

[5] Paragraph 4 of the defence refers to, inter alia, 'rakan plaintif' (plaintiff's friend) who is unidentified.

F **[6]** Paragraph 6 thereof contains general confidential information and matters related thereto and connected therewith.

Submissions by counsel and decision of the court

[7] Mr Toh Seng Soon, learned counsel for the plaintiff, submitted that G the abovesaid impugned paragraphs of the defence did not contain sufficient particulars, thereby causing difficulty to the plaintiff's preparation of the case.

[8] In relation to para 2 of the defence, Mr Ravinathan Muthiah, learned counsel for the defendant, contended that the defendant's academic H qualification is irrelevant to the plaintiff's claim and that O 18 r 2 merely entitles the plaintiff to obtain particulars arising from pleadings and not otherwise.

[9] He added that the particulars sought by the plaintiff pursuant to paras 4 and 5 of the defence relate to evidence which would be produced at I the trial.

[10] In my view the plaintiff's application is governed by O 18 r 12(3) which, where relevant, merits reproduction as follows:

The Court may order a party to serve on any other party particulars of any ... defence … stated in his pleading …on which he relies, and the order may be made on such terms as the Court thinks just.

[11] In *Dato' Seri Dr Ling Liong Sik v Krishna Kumar s/o Sivasubramaniam* [2002] 2 MLJ 278, pursuant to the respective pleadings, the parties applied for further and better particulars under O 18 r 12(3). Arifin Zakaria J (now JCA), at p 286, referred to the *Supreme Court Practice* (1997, Vol 1) at p 308 which sets out the function of particulars as follows:

(1) to inform the other side of the nature of the case that they have to meet as distinguished from the mode in which that case is to be proved (per Lindley LJ in *Duke & Sons v Wisden Co* (1897) 77 LT 67 at p 68, per Buckley LL in *Young (G & W) & Co Ltd v Scottish Union & National Insc Co* (1907) 24 TLR 73 at p 74, *Aga Khan v Times Publishing Co* [1924] 1 KB 675 at p 679);

(2) to prevent the other side from being taken by surprise at the trial (per Cotton LJ in *Spedding v Fitzpatrick* (1888) 38 Ch D 410 at p 413, *Thomson v Birkley* (1882) 31 WR 230);

(3) to enable the other side to know with what evidence they ought to be prepared and to prepare for trial (per Cotton LJ ibid; per Jessel MR in *Thorp v Holdsworth* (1876) 3 Ch D 637 at p 639; *Elkington v London Association for the Protection of Trade* (1911) 27 TLR 329 at p 330);

(4) to limit the generality of the pleadings (per Thesiger LJ in *Saunders v Jones* (1877) 7 Ch D 435) or of the claim or the evidence *(Milbank v Milbank* [1900] 1 Ch 376 at p 385);

(5) to limit and define the issues to be tried, and as to which discovery is required *(Yorkshire Provident Life Assurance Co v Gilbert and Rivington* [1895] 2 QB 148; per Vaughan Williams LJ in *Milbank v Milbank* [1900] 1 Ch 376; 385);

(6) to tie the hands of the party so that he cannot without leave go into any matters not included (per Brett LJ in *Philipps v Philipps* (1878) 4 QBD 127 p 133; *Wooley v Broad* [1892] 2 QB 317) — 'All material facts' para 18/7/10: and *Wooley v Broad* [1892] 2 QB 317). But if the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings (*Dean of Chester v Smelting Corp* [1902] WN 5; *Hewson v Cleeve* (1904) 2 Ir R 536).

[12] The learned judge then restated the following principles governing particulars:

(1) Particulars may be sought of matters arising from the pleadings.

(2) It is a matter of discretion of the courts whether to grant an order of particulars: see *Dato' V Kanalingam v Tommy Thomas & Anor* [1997] 5 MLJ 229; *Tan Hoe Kock & Anor v Ali Akarbara bin Mangudin & Ors* [1997] 4 MLJ 311.

(3) Particulars would not generally be ordered in matters of evidence or inference drawn or substitute interrogatories (see *Dato V Kanalingam)*.

[13] A litigant is entitled to have from his opponent, particulars of facts relevant to the issues at stake in order to prevent surprise, but he is not

A entitled to have his opponent's evidence: *Skrine & Co v MBf Capital Bhd & Anor* [1998] 3 MLJ 649 at p 664, as applied in *Dato' Seri Dr Ling Liong Sik.*

[14] It is instructive to state that particulars are now ordered much more freely than in former days: *Odgers on Pleading and Practice* [1960] (17th Ed) p 158.

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[15] I adopt and apply the aforesaid principles to the factual background in the instant application.

[16] Since para 2 of the defence states that the defendant is a laboratory assistant, his academic qualification is in my view relevant to the defendant's specific job description and that it was a matter arising from the

C defendant's pleading in the statement of defence.

[17] Para 4 of the defence refers to the plaintiff's friend who was unidentified. That being the case, the plaintiff is entitled to know the identity of his friend referred to herein.

D **[18]** Similarly, the plaintiff is entitled to know the specific particulars in connection with the general confidential information averred in para 6 of the defence.

[19] On the foregoing grounds, I allow the plaintiff's application and make an order in terms thereof, wherein the particulars must be served by

E the defendant on the plaintiff on or before 14 days from the date of plaintiff's service of the sealed copy of the order herein on the defendant.

Plaintiff's application allowed.

Reported by Chew Phye Ken

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